IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 201 OF 2005

Farouk Abubaker Eisa. ... Appellant.

Versus.

Haji Abubaker AHaji Eisa Poonawalla
and others. ... Respondents.

Shri B.Unnikrishnan for the Appellant.

Shri V.R.Tripathi for the Respondent No.1.

Shri Raj V.Moray i/by Shri Vishwanath Talkute for the
Respondents Nos.2 and 3.

CORAM : ABHAY S. OKA, J.

DATED : 15th February, 2005.

P.C.:

1. The dispute is between a son and the father. The Appellant is the son and the Respondent No.1 is the father. The Respondent No.2 is the real brother of the Appellant and the Respondent No.3 is the step-brother of the Appellant.

2. When the Appeal was heard on 14th February 2005, I directed the Advocate appearing for the Respondent No.1 to keep the Respondent No.1 present in the Chamber today at 2.30 p.m. Accordingly the Respondent No.1 remained present before me. The Respondent No.1 stated that he is willing to meet the Appellant at his residence at Mahim on a day mutually convenient to both of them. The said statement was made by the Respondent No.1 in my Chamber in the presence of the Advocate appearing for

the parties. The Advocate appearing for the Respondent No.1 was sitting next to him and he also asked questions in my presence to the Respondent No.1 and confirmed that the Respondent No.1 was willing to meet the Appellant.

3. The Challenge in this Appeal is to the impugned Judgment and Order dated 10th January 2005 by which the learned trial Judge declined to extend the earlier order of status-quo passed on 6th January 2005. The Notice of Motion for interim relief is pending. The prayers made in the said Notice of Motion read thus:

(a) Pending hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Defendants Nos.2 and 3 their agents, servants and/or any person or persons acting or claiming through them by an interim order and injunction from preventing or obstructing the Plaintiff in any manner whatsoever from visiting the Defendant No.1 at his place of residence or wherever he is available.

(b) Pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Defendants, their agents, servants and/or any person or persons acting or claiming through them by an interim order

and injunction from selling, disposing of or dealing with or encumbering or parting with possession of the suit properties or developing or putting up any constructions on the suit properties more particularly described in the Schedule annexed to the plaint as Exhibit "A".

In so far as prayer (b) is concerned, there is an affidavit filed by the Respondent No.1 which is on record which sufficiently protects the Appellant-Plaintiff at this stage. However, as the Notice of Motion is pending for hearing, I am not recording any specific finding as regards prayer clause (b) of the Motion.

4. The parties are closely related. Now the Respondent No.1 has shown willingness to meet the Appellant. Various issues are required to be considered and decided by the trial Court in the Notice of Motion which is pending. Till the Notice of Motion is heard it is desirable that the Appellant should meet the Respondent No.1 at the residence of the Respondent No.1 at Mahim, Mumbai. To ensure that the meeting takes place smoothly it is necessary that some senior Officer from the City Civil Court appointed by the said Court should remain present at the time of the meeting. It is also desirable that considering the age of the Respondent

No.1, if so desired by the Officer appointed by the trial Court, a Medical Practitioner should also remain present at the time of the meeting. It is also necessary with a view to avoid any controversy or dispute, the Respondents Nos.2 and 3 and all other close relatives of the Respondent No.1 should remain away from the residence of the Respondent No.1 when the meeting between the Appellant and the Respondent No.1 is arranged.

5. Hence the following order is passed:

(i) By way of ad-interim order in the pending Notice of Motion No.34 of 2005, the trial Court will appoint a senior Officer of the City Civil Court, Mumbai, as the Court Commissioner in whose presence the Appellant will meet the Respondent No.1 at the residence of Respondent No.1 at Mahim, Mumbai. The learned trial Judge will appoint a senior Officer as the Court Commissioner on production of an authenticated copy of this order.

(ii) The Court Commissioner appointed by the trial Court will fix a date and time of the meeting which is convenient to the parties especially to the Respondent No.1. On the

date and time fixed by the Court Commissioner, the Appellant will meet the Respondent No.1 at his Mahim residence for a period of half an hour. In case the Respondent No.1 expresses desire to continue meeting for some more time, the Court Commissioner will permit him to do so.

(iii) At the time when the meeting takes place, the Respondents Nos.2, 3, and all other close relatives will not remain present at the residence of the Respondent No.1 to avoid any confrontation between the parties.

(iv) If the Commissioner appointed by the trial Court deems necessary he can request a Medical Practitioner to remain present at the time of the meeting. If possible the Medical Practitioner should be known to the Respondent No.1. The fees of the Medical Practitioner and the Court Commissioner will be borne and paid by the Appellant. The quantum of fees to be fixed by the trial Court.

(v) The parties will complete the pleadings in so far as the Notice of Motion is concerned within a period of three weeks from today.

The learned trial Judge will dispose of the Notice of Motion finally as expeditiously as possible and preferably on or before 31st March 2005.

(vi) It is made clear that only the Appellant, Respondent No.1, Court Commissioner and the Medial Practitioner, if any, will remain present in the meeting.

(vii) It is obvious that the Notice of Motion will be heard by the learned trial Judge on its own merits. All questions of merits of the Notice of Motion are expressly kept open.

(viii) The Appeal is disposed of on the above terms with no order as to costs.

(xi) The parties and the trial Court to act on an authenticated copy of this order.

Judge.